

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MICHAEL GENE JOHNSON,  
TDCJ-CID #1160912,  
Petitioner,

v.

NATHANIEL QUARTERMAN,  
Respondent.

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CIVIL ACTION NO. H-05-4108

**MEMORANDUM OPINION AND ORDER**

Petitioner Michael Gene Johnson, a state inmate proceeding *pro se*, filed this habeas action under 28 U.S.C. § 2254 challenging his state court conviction. On March 27, 2006, the Court ordered respondent to answer. (Docket Entry No. 6.) In the order, the Court ordered and advised petitioner as follows:

If the respondent elects to answer by filing a dispositive motion ( *i.e.*, a motion to dismiss or for summary judgment) the petitioner shall file any reply within **thirty (30) days** of the date reflected on the certificate of service. If the petitioner fails to comply on time, the Court may dismiss this case for want of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

(*Id.*, p. 3, original emphasis.)

On May 25, 2006, respondent filed a motion for summary judgment. (Docket Entry No. 9.) The certificate of service reflects that petitioner was served with a copy of the motion on May 25, 2006. (*Id.*, p. 23.) To-date, and despite expiration of a reasonable period of time, petitioner has neither responded to the motion for summary judgment nor requested additional time to respond.

The Court finds that petitioner's failure to respond to the motion for summary judgment reflects his lack of due diligence in prosecuting his case. *See Martinez v. Johnson*, 104 F.3d 769 (5th Cir. 1997) (affirming dismissal for want of prosecution based on inmate's failure to respond to a summary judgment motion as ordered by the district court).

Accordingly, this case is **DISMISSED WITHOUT PREJUDICE** for want of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. A certificate of appealability is **DENIED**. Any and all pending motions are **DENIED AS MOOT**.

The Clerk will provide a copy of this order to the parties.

Signed at Houston, Texas, on this the 14<sup>th</sup> day of August, 2006.

  
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KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE